

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-against-

MEMORANDUM & ORDER

00-CR-240-10 (NGG)

ASLLAN MUJA,

Defendant.

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NICHOLAS G. GARAUFIS, United States District Judge.

On March 13, 2008, this court issued a memorandum and order denying pro se Defendant Asllan Muja's request for resentencing. (Docket Entry # 356 ("Resentencing Order").) On April 17, 2008, Defendant filed a "Motion Appealing Refusal to Re-sentence" with the United States Court of Appeals for the Second Circuit. See United States v. Muja, No. 02-1175-cr (2d Cir. Nov. 5, 2009). The Second Circuit construed this motion to be a notice of appeal from the Resentencing Order. Id. The notice was untimely, but because Defendant filed it within the 30-day period during which the district court can extend the time to file a notice of appeal, see Fed. R. App. P. 4(b)(4), the Second Circuit sent it to this court for adjudication, see United States v. Batista, 22 F.3d 492, 493 (2d Cir. 1994). This court now considers whether Defendant should have been granted an extension of time to file his notice of appeal.

A criminal defendant must file a notice of appeal in the district court within 14 days of the entry of the judgment or order being appealed. Fed. R. App. P. 4(b)(1)(a). Defendant filed his notice of appeal 35 days after the entry of the Resentencing Order, or 21 days after the expiration of the Rule 4(b)(1) deadline. Rule 4(b)(4) of the Federal Rules of Appellate Procedure, however, provides that:

[u]pon a finding of excusable neglect or good cause, the district court may – before or after the time has expired, with or without motion and notice – extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

Defendant has demonstrated neither excusable neglect nor good cause for his failure to file a timely notice of appeal. However, because Defendant is pro se, and because his notice of appeal was framed as a substantive appeal and therefore did not make reference to the requirements of Fed R. App. P. 4(b), this court will give Defendant an opportunity to show why this court should grant him the extension and consider his notice timely. Accordingly, this court gives Defendant until July 31, 2010 to submit a letter explaining why he failed to file a timely notice of appeal. Should Defendant fail to file such a letter, this court will deny the extension.

SO ORDERED.

Dated: Brooklyn, New York
June 24, 2010

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS
United States District Judge